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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 2307/2017**

G MUTHU SWAMI & ANR

.....Petitioners

Represented by: **Mr. Rakesh Wadhwa,**
Advocate.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Represented by: **Ms. Meenakshi Chauhan, APP**
for State with ACP Anand
Sagar and Inspector Rajeev, PS
Inderpuri.
Mr. Ajit Nair and Mr. Avdhesh
Numiwala, Advocates for
respondent No.2/complainant.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

12.09.2018

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Crl. M.A. No. 8077/2018 (placing on record documents-by complainant)

1. By this application the complainant seeks to place on record some documents.
2. Documents are taken on record.
3. Application is disposed of.

BAIL APPLN. 2307/2017

1. The sequence of events and copies of various PCR calls and complaints lodged have been handed over by the learned APP for State, which are taken on record.

2. By this petition, petitioners seek anticipatory bail in case FIR No.318/2015 initially registered under Sections 323/341/506/34 IPC registered at PS Inderpuri, Delhi. Subsequently, after the medical examination of the injured when the injury was opined to be grievous in nature Section 325 IPC was added to the FIR in question. However, since no investigation was carried out for offence punishable under Section 3 (1) (x) of the Scheduled Caste, Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'SC/ST Act') the complainant filed an application under Section 156 (3) Cr.P.C. wherein the learned Metropolitan Magistrate did not pass any directions hence a revision petition was filed by the complainant. The learned Additional Sessions Judge vide order dated 29th September, 2016 disposed of the said revision petition directing that investigation for offence punishable under Section 3 (1) (x) of SC/ST Act be also conducted by the ACP as per the rules.

3. Process of law was set into motion on 25th October, 2015 when a PCR call was received informing that the caller's nephew has been injured by knife. The injured was taken to the hospital and on the same intervening night his statement was recorded wherein he stated that he was doing a private job at Naraina and was residing with his parents. On 25th October, 2015 around 6.00 PM he had gone to his elder brother who was running a rehri of eggs. There Prabhu Nayakar abused his brother so the three of them quarrelled. In the meantime Ravi Nayakar and Muthu Swami, the two petitioners herein also came. They also scuffled with the complainant and Prabhu took the complainant on one side where Ravi Nayakar and Muthu Swami caught hold of him and Prabhu by a weapon in the nature of Katta hit

him on his left cheek, scalp and shoulder. He alleges that all three of them assaulted him. Somebody from his side called at 100 number and his uncle brought Vinay, the victim to the hospital. Vinay sought legal action against the three and stated that while leaving, they threatened him of life and one of them “*usne*” gave a caste remarks and also threatened of money.

4. Undoubtedly, in view of the fact that caste remarks were used by one of the accused, investigating agency was required to invoke provision under Section 3 (1) (x) of SC/ST Act, which was not done and was only investigated after the order was passed by the learned Additional Sessions Judge.

5. Later on 31st October, 2015, that is, after six days of incident a typed complaint was given by father of the petitioner, wherein besides reiterating the allegations in the FIR it is also stated that on 30th October, 2015 at 11.00 PM while he was sleeping with his family he heard Ravi Nayakar and his brother abusing and used caste remarks and threatened that in case they do not take back their report they would be killed.

6. A perusal of the FIR as above shows that the allegations of use of caste remarks is only against one person and as regards the incident dated 30th October, 2015 at 11.00 PM it is alleged that Ravi Nayakar and his brother, that is, petitioner No.2 herein used abusing language and used caste remarks. It is not clear from the complaint as to which place were caste remarks used and who was present at that time at 11.00 PM as admittedly Mukesh Kumar, father of the victim himself stated that he was sleeping.

7. On a query put by this Court to the Investigating Officer as to whether the petitioners have joined the investigation, learned APP for the State

submits that the petitioners have joined the investigation.

8. Considering the role assigned to the petitioners, which was of catching hold and the fact that in the first complaint the allegations of caste remarks are not against the petitioners, also the fact that the petitioners have been on interim protection since 13th December, 2017, this Court deems it fit to grant anticipatory bail to the petitioners. It is, therefore directed that in the event of arrest the petitioners be released on bail on their furnishing personal bond in the sum of ₹25,000/- each with one surety each of the like amount, subject to the satisfaction of the Arresting Officer/SHO concerned, further subject to the condition that the petitioner will join the investigation as and when directed by the Investigating Officer and will not leave the country without prior permission of the Court concerned and in case of change of residential address the same will be intimated to the concerned Court by way of an affidavit.

9. Petition is disposed of.

10. Order dasti.

MUKTA GUPTA, J.

SEPTEMBER 12, 2018

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